

S-5164

1 Amend the amendment, S-5152, to House File 2458,
2 as amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 19, after line 3 by inserting:

5 <DIVISION _____
6 RELATED STATUTORY CHANGES FOR CODIFICATION IN 2014
7 EMINENT DOMAIN

8 Sec. _____. NEW SECTION. **6A.15 Property on state**
9 **historic registry.**

10 1. Property listed on the state register of
11 historic places maintained by the historical division
12 of the department of cultural affairs shall not be
13 removed from the register solely for the purpose of
14 allowing acquisition of the property by condemnation,
15 unless such condemnation is undertaken by the
16 department of transportation.

17 2. Property listed on the state register of
18 historic places maintained by the historical division
19 of the department of cultural affairs shall not be
20 condemned by the state or a political subdivision
21 unless a joint resolution authorizing commencement of
22 the condemnation proceedings is approved by a vote of
23 at least two-thirds of the members of both chambers
24 of the general assembly and signed by the governor.
25 The approval requirements of this subsection shall not
26 apply to condemnation undertaken by the department of
27 transportation.

28 Sec. _____. Section 6A.22, subsection 2, paragraph
29 c, subparagraph (1), Code 2014, is amended to read as
30 follows:

31 (1) (a) If private property is to be condemned for
32 development or creation of a lake, only that number
33 of acres justified as reasonable and necessary for
34 a surface drinking water source, and not otherwise
35 acquired, may be condemned. In addition, the acquiring
36 agency shall conduct a review of prudent and feasible
37 alternatives to provision of a drinking water source
38 prior to making a determination that such lake
39 development or creation is reasonable and necessary.
40 Development or creation of a lake as a surface drinking
41 water source includes all of the following:

42 (i) Construction of the dam, including sites for
43 suitable borrow material and the auxiliary spillway.

44 (ii) The water supply pool.

45 (iii) The sediment pool.

46 (iv) The flood control pool.

47 (v) The floodwater retarding pool.

48 (vi) The surrounding area upstream of the dam
49 no higher in elevation than the top of the dam's
50 elevation.

(vii) The appropriate setback distance required by state or federal laws and regulations to protect drinking water supply.

(b) For purposes of this subparagraph (1), *"number of acres justified as reasonable and necessary for a surface drinking water source"* means according to guidelines of the United States natural resource conservation service and according to analyses of surface drinking water capacity needs conducted by one or more registered professional engineers. The registered professional engineers may, if appropriate, employ standards or guidelines other than the guidelines of the United States natural resource conservation service when determining the number of acres justified as reasonable and necessary for a surface drinking water source. The data and information used by the registered professional engineers shall include data and information relating to population and commercial enterprise activity for the area from the two most recent federal decennial censuses unless the district court of the county in which the property is situated has determined by a preponderance of the evidence that such data would not accurately predict the population and commercial enterprise activity of the area in the future.

(c) A second review or analysis of the drinking water capacity needs shall be performed upon receipt by the acquiring agency of a petition signed by not less than twenty-five percent of the affected property owners. The registered professional engineer to perform the second review or analysis shall be selected by a committee appointed by the affected property owners and whose membership is comprised of at least fifty percent property owners affected by the proposed condemnation action. The acquiring agency shall be responsible for paying the fees and expenses of such an engineer.

(d) If private property is to be condemned for development or creation of a lake, the plans, analyses, applications, including any application for funding, and other planning activities of the acquiring agency shall not include or provide for the use of the lake for recreational purposes.

Sec. _____. Section 6B.54, subsection 10, paragraph a, Code 2014, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (3) Reasonable attorney fees and reasonable costs not to exceed one hundred thousand dollars, attributable to a determination that the creation of a lake through condemnation includes a

1 future recreational use or that a violation of section
2 6A.22, subsection 2, paragraph "c", subparagraph (1),
3 subparagraph division (d), has occurred, if such fees
4 and costs are not otherwise provided under section
5 6B.33.

6 Sec. _____. NEW SECTION. 6B.56B Disposition of
7 condemned property — two-year time period.

8 1. When two years have elapsed since property
9 was condemned for the creation of a lake according
10 to the requirements of section 6A.22, subsection 2,
11 paragraph "c", subparagraph (1), and the property has
12 not been used for or construction has not progressed
13 substantially from the date the property was condemned
14 for the purpose stated in the application filed
15 pursuant to section 6B.3, and the acquiring agency has
16 not taken action to dispose of the property pursuant
17 to section 6B.56, the acquiring agency shall, within
18 sixty days, adopt a resolution offering the property
19 for sale to the prior owner at a price as provided in
20 section 6B.56. If the resolution adopted approves an
21 offer of sale to the prior owner, the offer shall be
22 made in writing and mailed by certified mail to the
23 prior owner. The prior owner has one hundred eighty
24 days after the offer is mailed to purchase the property
25 from the acquiring agency.

26 2. If the acquiring agency has not adopted a
27 resolution described in subsection 1 within the
28 sixty-day time period, the prior owner may, in writing,
29 petition the acquiring agency to offer the property
30 for sale to the prior owner at a price as provided in
31 section 6B.56. Within sixty days after receipt of
32 such a petition, the acquiring agency shall adopt a
33 resolution described in subsection 1. If the acquiring
34 agency does not adopt such a resolution within sixty
35 days after receipt of the petition, the acquiring
36 agency is deemed to have offered the property for sale
37 to the prior owner.

38 3. The acquiring agency shall give written notice
39 to the owner of the right to purchase the property
40 under this section at the time damages are paid to the
41 owner.

42 Sec. _____. Section 403.7, subsection 1, unnumbered
43 paragraph 1, Code 2014, is amended to read as follows:

44 A municipality shall have the right to acquire by
45 condemnation any interest in real property, including a
46 fee simple title thereto, which it may deem necessary
47 for or in connection with an urban renewal project
48 under this chapter, subject to the limitations on
49 eminent domain authority in ~~chapter~~ chapters 6A and 6B.
50 However, a municipality shall not condemn agricultural

1 land included within an economic development area
2 for any use unless the owner of the agricultural land
3 consents to condemnation or unless the municipality
4 determines that the land is necessary or useful for any
5 of the following:

6 Sec. _____. NEW SECTION. 423B.11 Use of revenues —
7 limitation.

8 The revenue raised by a local sales and services
9 tax imposed under this chapter by a county shall not
10 be expended for any purpose related to a project that
11 includes the condemnation of private property for
12 the creation of a lake according to the requirements
13 of section 6A.22, subsection 2, paragraph "c",
14 subparagraph (1), if the local sales and services tax
15 has not been approved at election in the area where the
16 property to be condemned is located.

17 Sec. _____. Section 455A.5, Code 2014, is amended by
18 adding the following new subsection:

19 NEW SUBSECTION. 7. The authority granted to the
20 commission to acquire real property for purposes
21 of carrying out a duty related to development or
22 maintenance of the recreation resources of the state,
23 including planning, acquisition, and development of
24 recreational projects, and areas and facilities related
25 to such projects, shall not include the authority to
26 acquire real property by eminent domain.

27 Sec. _____. Section 456A.24, subsection 2, unnumbered
28 paragraph 1, Code 2014, is amended to read as follows:

29 Acquire by purchase, ~~condemnation~~, lease, agreement,
30 gift, and devise lands or waters suitable for the
31 purposes hereinafter enumerated, and rights-of-way
32 thereto, and to maintain the same for the following
33 purposes, ~~to-wit~~:

34 Sec. _____. Section 456A.24, Code 2014, is amended by
35 adding the following new subsection:

36 NEW SUBSECTION. 15. The authority granted the
37 department to acquire real property for any statutory
38 purpose relating to the development or maintenance
39 of the recreation resources of the state, including
40 planning, acquisition, and development of recreational
41 projects, and areas and facilities related to such
42 projects, shall not include the authority to acquire
43 real property by eminent domain.

44 Sec. _____. Section 461A.7, Code 2014, is amended to
45 read as follows:

46 461A.7 ~~Eminent domain~~ Purchase of lands — public
47 parks.

48 The commission may purchase ~~or condemn~~ lands from
49 willing sellers for public parks. ~~No A~~ contract for
50 the purchase of such public parks shall not be made to

1 an amount in excess of funds appropriated therefor by
2 the general assembly.

3 Sec. _____. Section 461A.10, Code 2014, is amended to
4 read as follows:

5 **461A.10 Title to lands.**

6 The title to all lands purchased, ~~condemned~~, or
7 donated, hereunder, for park ~~or highway~~ purposes and
8 the title to all lands purchased, condemned, or donated
9 hereunder for highway purposes, shall be taken in the
10 name of the state and if thereafter it shall be deemed
11 advisable to sell any portion of the land so purchased
12 or condemned, the proceeds of such sale shall be placed
13 to the credit of the said public state parks fund to be
14 used for such park purposes.

15 Sec. _____. Section 463C.8, subsection 1, paragraph
16 k, Code 2014, is amended to read as follows:

17 k. The power to acquire, own, hold, administer,
18 and dispose of property, except that such power is not
19 a grant of authority to acquire property by eminent
20 domain.

21 Sec. _____. 2013 Iowa Acts, chapter 132, is amended
22 by adding the following new section:

23 NEW SECTION. SEC. 75. REPEAL. Sections 461A.9 and
24 461A.75, Code 2014, are repealed.

25 Sec. _____. LIMITATION. The provisions of
26 this division of this Act shall not be construed
27 or interpreted to limit or otherwise affect the
28 application of chapters 6A, 478, or 479 as they relate
29 to the eminent domain authority of the utilities
30 division of the department of commerce.

31 Sec. _____. SEVERABILITY. If any provision of this
32 division of this Act is held invalid, the invalidity
33 shall not affect other provisions or applications of
34 this division of this Act which can be given effect
35 without the invalid provision, and to this end the
36 provisions of this division of this Act are severable
37 as provided in section 4.12.

38 Sec. _____. EFFECTIVE UPON ENACTMENT. This division
39 of this Act, being deemed of immediate importance,
40 takes effect upon enactment.

41 Sec. _____. APPLICABILITY. Except as otherwise
42 provided in this division of this Act, this division
43 of this Act applies to projects or condemnation
44 proceedings pending or commenced on or after the
45 effective date of this division of this Act.

46 Sec. _____. RETROACTIVE APPLICABILITY.
47 Notwithstanding any provision of law to the contrary,
48 the following provision or provisions of this division
49 of this Act apply retroactively to projects or
50 condemnation proceedings pending or commenced on or

1 after February 15, 2013:
2 1. The section of this division of this Act
3 amending section 6A.22.
4 2. The section of this division of this Act
5 enacting section 6B.56B.>
6 2. Page 19, line 41, after <protection,> by
7 inserting <providing for eminent domain procedures,>
8 3. Page 19, line 42, before <date> by inserting
9 <and applicability>
10 4. By renumbering as necessary.

JULIAN GARRETT